

**DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

UNITED STATES OF AMERICA,

Plaintiff,

v.

VICTORINE FARRELLY,

Defendant.

Civil Action No. 2019-0028

Appearances:

Angela Tyson-Floyd, Esq.

St. Croix, U.S.V.I.

Michael Joseph Martineau, Esq.

Washington, DC

Jonathan Carroll, Esq.

Washington, DC

For Plaintiff

Victorine Farrelly, Pro Se

St. Croix, U.S.V.I.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Defendant Victorine Farrelly's failure to file a response to Plaintiff United States of America's Motion for Summary Judgment. (Dkt. No. 53).

On August 22, 2022, the United States filed its Motion for Summary Judgment, along with a Memorandum in Support of such Motion, (Dkt. No. 54), and a Statement of Undisputed Material Facts. (Dkt. No. 55). Based on Defendant's expressed desire to resolve the matter by settlement, Magistrate Judge Emile A. Henderson III stayed her response to the Motion for Summary Judgment. (Dkt. No. 56 at 1-2).

On August 17, 2023, the United States filed a status report informing the Court that "the parties have not been able to reach a resolution." (Dkt. No. 69 at 1). Consistent with the Magistrate

Judge’s earlier Order, the United States sought an Order directing Defendant to respond to the Motion for Summary Judgment within 21 days. *Id.* On the same day, Magistrate Judge Henderson issued an Order which, among other things, (1) directed the United States to serve its Motion for Summary Judgment on Defendant by August 24, 2023; (2) set a deadline of September 14, 2023, for Defendant to file a response to such Motion; and (3) indicated that Defendant’s failure to file a response by that date would render such Motion “ready for disposition by the District Judge.” (Dkt. No. 70 ¶ 1-3).

On August 24, 2023, the United States filed a Notice of Service, indicating that it “sent copies of the United States’ Motion for Summary Judgment, Memorandum in Support, and Statement of Undisputed Material Facts with exhibits . . . to defendant by email, U.S. Mail, and Certified Mail.” (Dkt. No. 73). The Certified Mail was returned to sender as unable to forward (Dkt. No. 74), and the Magistrate Judge’s September 14, 2023 deadline passed without a filing by Defendant.

On October 17, 2023, the United States filed a “Notice of Defendant’s Current Address.” (Dkt. No. 76). In it, the United States indicated that, “[o]n September 28, 2023, Defendant contacted counsel for the United States and provided him the address where she is currently residing with a family member” *Id.* at 1. The United States reported that “[a]s a result, on September 28, 2023, counsel for the United States sent [Defendant] by U.S. Mail and FEDEX copies of the United States Notice of Service of the United States’ Motion for Summary Judgment, Memorandum in Support, and Statement of Undisputed Material Facts with exhibits, along with those documents” *Id.* The District Court Clerk’s Office also forwarded the filings to Defendant and received a signed, but undated, return receipt in response, which was filed on the docket on October 30, 2023. (Dkt. No. 77).

Here, the exact date on which Defendant received the United States' Motion for Summary Judgment and related filings is unclear. Nonetheless, it appears that, by October 30, 2023 at the latest, Defendant had received the documents. While the Court recognizes that this is beyond Magistrate Judge Henderson's previously set September 14, 2023 deadline, even the 21-day response time set forth in Local Rule of Civil Procedure 6.1(b)(2), as applied to the October 30th date, would have expired as of November 20, 2023. Thus, under even the most generous interpretation of the circumstances here, any response by Defendant at this point would be untimely.

Notwithstanding the foregoing, the Court, in its discretion, will allow Defendant additional time to file a response. As such, the Court will permit Defendant up to and including February 21, 2024 to respond to the United States' summary judgment motion.

UPON CONSIDERATION of the foregoing, it is hereby

ORDERED that Defendant shall have up to and including **February 21, 2024** to file a response to the United States' Motion for Summary Judgment (Dkt. No. 53), and it is further

ORDERED that the Clerk of Court is directed to provide a copy of this Memorandum Opinion and Order to Defendant Victorine Farrelly via certified mail, return receipt requested.

SO ORDERED.

Date: February 7, 2024

_____/s/_____
WILMA A. LEWIS
District Judge